

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1070 of 1987

with

CIVIL APPLICATION No 1357 of 1988

in

SPECIAL CIVIL APPLICATION No 1070 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

C C MEGHANI

Versus

DIST. PANCHAYAT

Appearance:

MR PV HATHI for Petitioner

MR ND NANAVATI for Respondent No. 1

MR SK PATEL for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/09/1999

ORAL JUDGEMENT

#. Heard the learned counsel for the parties.

#. The petitioner's services were brought to an end on 19.1.73 without holding departmental inquiry on the alleged misconduct of remaining absent without sanctioned leave. This order was challenged by petitioner by filing Special Civil Suit No.67 of 1974 which came to be decreed on 31.1.81 by the 3rd Joint Civil Judge (Senior Division), Rajkot on Deputation, at Gondal. The operative part of the judgment of the Court below reads as under:

Plaintiff's suit for declaration is decreed. The impugned order dated 19.1.73 is declared to be void. Plaintiff's claim for arrears of salary till the date of the suit is dismissed....

#. After this decision on 7.3.81, the petitioner was reinstated back in service by respondent No.1. On 18.1.82, the order (annexure-B) came to be passed by respondent No.1, under which the period from 12.1.73 to 5.3.81 was ordered to be regularized as extra ordinary leave. This order was challenged by petitioner before the Labour Court or the Tribunal and it is the say of the petitioner that the Labour Court has declined to decide the same on the ground that it has no jurisdiction in the matter as the petitioner is not a 'workman'. The petitioner, on 13th December 1986, applied for voluntary retirement but that was not decided. In March, 1987, this writ petition has been filed and on 24th April, 1988, interim order has been passed by this Court and thereafter under the order dated 28th June 1988, the petitioner was permitted to go on voluntary retirement from 31st December, 1988. After the retirement, the pension was fixed but the period from the date of filing of the suit to 5th March 1981 was not treated as qualifying services for determining the amount of pension and other retirementary benefits. The petitioner filed Civil Application No.1357 of 1988 which was ordered to be heard with the main petition.

#. One of the contentions raised by the learned counsel for the petitioner is that the order dated 18.1.82 has been passed without notice and opportunity of hearing to the petitioner. That has not been controverted by the learned counsel for the respondents.

#. I have given my thoughtful considerations to the

submissions made by learned counsel for the parties, and I am in agreement with the contention raised by learned counsel for the petitioner that the order has been passed without notice and opportunity of hearing to the petitioner. This order results in manifold civil consequences. Not only the salary for this period has been denied to the petitioner but her continuity in services have also been broken as a result of which her eight years' services have gone out of the zone of consideration of qualifying services for fixation of pension and other retirementary benefits. This is clearly reflected from the subsequent developments which have taken place during the pendency of this Special Civil Application. Even if it is taken that the order dated 18.1.82 is administrative in nature still if it results in civil consequences, the authority passing the same has to follow the minimum requirement of principles of natural justice, i.e. to give notice and opportunity of hearing to the petitioner, which precisely has not been done in the present case and only on this ground, this writ petition deserves to be allowed and the same is allowed and the order dated 18.1.82 is quashed and set aside. However, it is open to the respondent No.1 to pass a fresh order in the matter after giving notice and opportunity of hearing to the petitioner. However, if it decides to pass a fresh order it has to be passed within a period of two months from the date of receipt of writ of this order. Rule is made absolute in aforesaid terms with no order as to costs.

#. In view of this decision, now nothing survives in the Civil Application and the same is dismissed.

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[sunil]